

# SENATE BILL No. 145

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-50-2-9.

**Synopsis:** Death penalty. Provides that any lingering doubt concerning a defendant's guilt constitutes a mitigating circumstance in a death penalty case or a life without parole case. Requires the judge in a death penalty case to instruct the jury as follows: "If a juror has any lingering doubt about the defendant's guilt, that doubt may be considered a mitigating circumstance that weighs against the imposition of the death penalty.". Prohibits imposition of the death penalty or life imprisonment without parole if the jury deadlocks. Makes a technical correction.

**Effective:** July 1, 2003.

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**Bowser**

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January 7, 2003, read first time and referred to Committee on Judiciary.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 145

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-50-2-9, AS AMENDED BY P.L.117-2002,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]: Sec. 9. (a) The state may seek either a death sentence  
4 or a sentence of life imprisonment without parole for murder by  
5 alleging, on a page separate from the rest of the charging instrument,  
6 the existence of at least one (1) of the aggravating circumstances listed  
7 in subsection (b). In the sentencing hearing after a person is convicted  
8 of murder, the state must prove beyond a reasonable doubt the  
9 existence of at least one (1) of the aggravating circumstances alleged.  
10 However, the state may not proceed against a defendant under this  
11 section if a court determines at a pretrial hearing under IC 35-36-9 that  
12 the defendant is a mentally retarded individual.  
13 (b) The aggravating circumstances are as follows:  
14 (1) The defendant committed the murder by intentionally killing  
15 the victim while committing or attempting to commit any of the  
16 following:  
17 (A) Arson (IC 35-43-1-1).



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- 1 (B) Burglary (IC 35-43-2-1).
- 2 (C) Child molesting (IC 35-42-4-3).
- 3 (D) Criminal deviate conduct (IC 35-42-4-2).
- 4 (E) Kidnapping (IC 35-42-3-2).
- 5 (F) Rape (IC 35-42-4-1).
- 6 (G) Robbery (IC 35-42-5-1).
- 7 (H) Carjacking (IC 35-42-5-2).
- 8 (I) Criminal gang activity (IC 35-45-9-3).
- 9 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 10 (2) The defendant committed the murder by the unlawful
- 11 detonation of an explosive with intent to injure person or damage
- 12 property.
- 13 (3) The defendant committed the murder by lying in wait.
- 14 (4) The defendant who committed the murder was hired to kill.
- 15 (5) The defendant committed the murder by hiring another person
- 16 to kill.
- 17 (6) The victim of the murder was a corrections employee,
- 18 probation officer, parole officer, community corrections worker,
- 19 home detention officer, fireman, judge, or law enforcement
- 20 officer, and either:
- 21 (A) the victim was acting in the course of duty; or
- 22 (B) the murder was motivated by an act the victim performed
- 23 while acting in the course of duty.
- 24 (7) The defendant has been convicted of another murder.
- 25 (8) The defendant has committed another murder, at any time,
- 26 regardless of whether the defendant has been convicted of that
- 27 other murder.
- 28 (9) The defendant was:
- 29 (A) under the custody of the department of correction;
- 30 (B) under the custody of a county sheriff;
- 31 (C) on probation after receiving a sentence for the commission
- 32 of a felony; or
- 33 (D) on parole;
- 34 at the time the murder was committed.
- 35 (10) The defendant dismembered the victim.
- 36 (11) The defendant burned, mutilated, or tortured the victim while
- 37 the victim was alive.
- 38 (12) The victim of the murder was less than twelve (12) years of
- 39 age.
- 40 (13) The victim was a victim of any of the following offenses for
- 41 which the defendant was convicted:
- 42 (A) Battery as a Class D felony or as a Class C felony under

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- 1 IC 35-42-2-1.  
 2 (B) Kidnapping (IC 35-42-3-2).  
 3 (C) Criminal confinement (IC 35-42-3-3).  
 4 (D) A sex crime under IC 35-42-4.
- 5 (14) The victim of the murder was listed by the state or known by  
 6 the defendant to be a witness against the defendant and the  
 7 defendant committed the murder with the intent to prevent the  
 8 person from testifying.
- 9 (15) The defendant committed the murder by intentionally  
 10 discharging a firearm (as defined in IC 35-47-1-5):  
 11 (A) into an inhabited dwelling; or  
 12 (B) from a vehicle.
- 13 (16) The victim of the murder was pregnant and the murder  
 14 resulted in the intentional killing of a fetus that has attained  
 15 viability (as defined in IC 16-18-2-365).
- 16 (c) The mitigating circumstances that may be considered under this  
 17 section are as follows:
- 18 (1) The defendant has no significant history of prior criminal  
 19 conduct.
- 20 (2) The defendant was under the influence of extreme mental or  
 21 emotional disturbance when the murder was committed.
- 22 (3) The victim was a participant in or consented to the defendant's  
 23 conduct.
- 24 (4) The defendant was an accomplice in a murder committed by  
 25 another person, and the defendant's participation was relatively  
 26 minor.
- 27 (5) The defendant acted under the substantial domination of  
 28 another person.
- 29 (6) The defendant's capacity to appreciate the criminality of the  
 30 defendant's conduct or to conform that conduct to the  
 31 requirements of law was substantially impaired as a result of  
 32 mental disease or defect or of intoxication.
- 33 (7) The defendant was less than eighteen (18) years of age at the  
 34 time the murder was committed.
- 35 (8) **Any lingering doubt concerning the defendant's guilt.**
- 36 (9) Any other circumstances appropriate for consideration.
- 37 (d) If the defendant was convicted of murder in a jury trial, the jury  
 38 shall reconvene for the sentencing hearing. If the trial was to the court,  
 39 or the judgment was entered on a guilty plea, the court alone shall  
 40 conduct the sentencing hearing. The jury or the court may consider all  
 41 the evidence introduced at the trial stage of the proceedings, together  
 42 with new evidence presented at the sentencing hearing. The court shall

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instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. **In addition, the court shall instruct the jury as follows: "If a juror has any lingering doubt about the defendant's guilt, that doubt may be considered a mitigating circumstance that weighs against the imposition of the death penalty."** The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (k) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court **may not sentence the defendant to death or impose a sentence of life imprisonment without parole. The court** shall discharge the jury, ~~and~~ proceed as if the hearing had been to the court alone, **and impose a sentence other than death or life imprisonment without parole.**

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

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(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
  - (A) Constitution of the State of Indiana; or
  - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.**

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b)

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- 1 exists; and
- 2 (2) any mitigating circumstances that exist are outweighed by the
- 3 aggravating circumstance or circumstances.

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